
A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that protecting religious
2 freedom from government intrusion is a state interest of the
3 highest order, especially in the aftermath of the Supreme Court
4 of the United States' decision in *Obergefell v. Hodges*, 576 U.
5 S. ___, 135 S. Ct. 2071, 191 L. Ed. 2d 953 (2015). In the
6 *Obergefell v. Hodges* opinion, the Supreme Court held same-sex
7 couples have a right to marry, but also noted that "Many who
8 deem same-sex marriage to be wrong reach that conclusion based
9 on decent and honorable religious or philosophical premises, and
10 neither they nor their beliefs are disparaged here."

11 The purpose of this Act, which shall be known as the "First
12 Amendment Defense Act", is to protect the free exercise of
13 religious beliefs and moral convictions by prohibiting the State
14 from taking any discriminatory action against a person based on
15 the person's sincerely held religious belief or moral
16 conviction, including the belief that marriage is the union of
17 one man and one woman.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 FIRST AMENDMENT DEFENSE ACT

6 § -1 Findings. The legislature finds that:

7 (1) Leading legal scholars concur that conflicts between
8 same-sex marriage and religious liberty are real and
9 should be legislatively addressed.

10 (2) As the President stated in response to the decision of
11 the Supreme Court on the Defense of Marriage Act in
12 2013, "Americans hold a wide range of views" on the
13 issue of same-sex marriage, and "maintaining our
14 Nation's commitment to religious freedom" is "vital".

15 (3) Nevertheless, in 2015, when asked whether a religious
16 school could lose its tax-exempt status for opposing
17 same-sex marriage, the Solicitor General of the United
18 States represented to the United States Supreme Court
19 that "[i]t's certainly going to be an issue".

20 (4) Protecting religious freedom from Government intrusion
21 is a Government interest of the highest order.

22 Legislatively enacted measures advance this interest



1 by remedying, deterring, and preventing Government
2 interference with religious exercise in a way that
3 complements the protections mandated by the First
4 Amendment to the Constitution of the United States.

5 (5) Laws that protect the free exercise of religious
6 beliefs and moral convictions about marriage will
7 encourage private citizens and institutions to
8 demonstrate tolerance for those beliefs and
9 convictions and therefore contribute to a more
10 respectful, diverse, and peaceful society.

11 **§ -2 Definitions.** For the purposes of this chapter:

12 "Person" includes any individual or any corporation,
13 company, sole proprietorship, partnership, society, club,
14 organization, or association, except that such term shall not
15 include medical providers, hospitals, clinics, hospices, nursing
16 homes, or residential custodial facilities with respect to
17 visitation, recognition of a designated representative for
18 health care decision making, or refusal to provide life-saving
19 and emergency medical treatment necessary to cure an illness or
20 injury.

21 "The State" means:



1 (1) Any department, commission, board, agency, or agent of
2 the State;

3 (2) Any political subdivision of the State and any
4 department, commission, board, agency, or agent of such
5 political subdivision; and

6 (3) Any individual or entity acting under color of state
7 law.

8 "State benefit program" means any program administered or
9 funded by the State, or by any agent on behalf of the State,
10 providing cash, vouchers, payments, grants, contracts, loans, or
11 in-kind assistance.

12 **§ -3 Protection of the Free Exercise of Religious**
13 **Beliefs and Moral Convictions.** (a) In General. Notwithstanding
14 any other provision of law to the contrary, the State shall not
15 take any discriminatory action against a person, wholly or
16 partially on the basis that such person believes or acts in
17 accordance with a sincerely held religious belief or moral
18 conviction that:

19 (1) Marriage is or should be recognized as the union of
20 one man and one woman;

21 (2) Sexual relations are properly reserved to such a
22 marriage; or



1 (3) Male (man) and female (woman) refer to distinct and
2 immutable biological sexes that are determinable by
3 anatomy and genetics by the time of birth.

4 (b) Discriminatory Action Defined. As used in subsection
5 (a), a discriminatory action means any action taken by the State
6 to:

7 (1) Alter in any way the tax treatment of, or cause any
8 tax, penalty, or payment to be assessed against, or
9 deny, delay, revoke, or otherwise make unavailable an
10 exemption from taxation of any person referred to in
11 subsection (a);

12 (2) Apply or cause to be applied, a fine, penalty, or
13 payment assessed against such person;

14 (3) Disallow, deny, or otherwise make unavailable a
15 deduction for state tax purposes of any charitable
16 contribution made to or by such person;

17 (4) Withhold, reduce, exclude, terminate, materially alter
18 the terms or conditions of, or otherwise make
19 unavailable or deny any state grant, contract,
20 subcontract, cooperative agreement, guarantee, loan,
21 scholarship, diploma, grade, recognition, license,
22 certification, accreditation, employment, or other



1 similar benefit, position, or status from or to such
2 person;

3 (5) Withhold, reduce, exclude, terminate, or otherwise
4 make unavailable or deny any entitlement or benefit
5 under a state benefit program, including admission to,
6 equal treatment in, or eligibility for a degree from
7 an educational program, from or to such person;

8 (6) Withhold, reduce, exclude, terminate or otherwise make
9 unavailable or deny access or an entitlement to state
10 property, facilities; educational institutions, speech
11 fora (including traditional, limited, and nonpublic
12 fora), or charitable fundraising campaigns from or to
13 such person; or

14 (7) Investigate or initiate an investigation, claim, or
15 administrative proceeding of such person, if that
16 person would not otherwise be subject to such action.

17 (c) Accreditation, Licensure, Certification. The State
18 shall consider accredited, licensed, or certified any person
19 that would otherwise be accredited, licensed, or certified,
20 respectively, for any purposes under state law but for a
21 determination against such person wholly or partially on the
22 basis that the person believes, speaks, or acts in accordance



1 with a sincerely held religious belief or moral conviction
2 described in subsection (a).

3 **§ -4 Judicial Relief.** (a) Cause of Action. A person
4 may assert a violation of this Act as a claim or defense in any
5 judicial or administrative proceeding and obtain compensatory
6 damages, injunctive relief, declaratory relief, or any other
7 appropriate relief. Standing to assert a claim or defense under
8 this section shall be governed by the general rules of standing
9 under the laws of the State.

10 (b) Administrative Remedies Not Required. Notwithstanding
11 any other provision of law, an action under this section may be
12 commenced, and relief may be granted, in a court of the State
13 without regard to whether the person commencing the action has
14 sought or exhausted available administrative remedies.

15 (c) Attorneys' Fees. In any action or proceeding to
16 enforce a provision of this Act, a prevailing party who
17 establishes a violation of this Act shall be entitled to recover
18 reasonable attorneys' fees and costs.

19 (d) Authority of the State to Enforce This Act. The
20 Attorney General may bring an action for injunctive or
21 declaratory relief against the State to enforce compliance with
22 this Act. Nothing in this subsection shall be construed to



1 deny, impair, or otherwise affect any right or authority of the
2 Attorney General or the State, acting under any law other than
3 this subsection, to institute or intervene in any proceeding.

4 **§ -5 Rules of Construction.** (a) Provision of Benefits
5 and Services. Nothing in this Act shall be construed to prevent
6 the State from providing, either directly or through an
7 individual or entity not seeking protection under this Act, any
8 benefit or service authorized under state law.

9 (b) No Preemption, Repeal, or Narrow Construction. The
10 protection of free exercise of religious beliefs and moral
11 convictions afforded by this Act are in addition to the
12 protections provided under federal law, state law, and the state
13 and federal constitutions. Nothing in this Act shall be
14 construed to preempt or repeal any state or local law that is
15 equally or more protective of free exercise of religious beliefs
16 or moral convictions, and nothing in this Act shall be construed
17 to narrow the meaning or application of any state or local law
18 protecting free exercise of religious beliefs or moral
19 convictions.

20 (c) Severability. If any provision of this Act or any
21 application of such provision to any particular person or
22 circumstance is held to be invalid under law, the remainder of



1 this Act and the application of its provisions to any other
2 person or circumstance shall not be affected."

3 SECTION 3. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 4. This Act shall take effect upon its approval.

7
INTRODUCED BY: Felix Paul

JAN 26 2016



H.B. NO. 2532

Report Title:

Religious Freedom; First Amendment Defense Act.

Description:

Protects the free exercise of religious beliefs and moral convictions by prohibiting the State from taking any discriminatory action against a person based on the person's sincerely held religious belief or moral conviction. Provides a cause of action for a violation of the Act.

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